

Regulations of the Monterey Board of Health

Sale of Tobacco Products to Minors

Effective Date: January 14, 2008

These regulations replace any and all prior Youth Access to Tobacco Products.

All clerks selling tobacco must be certified by July 14, 2008.

Previous violations will be carried over into this regulation.

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the Monterey Board of Health to curtail the access of tobacco products by minors.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Monterey Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations"

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including Monterey or any agency thereof, which uses the services of one (1) or more employees.

Minor: Any individual who is under the age of eighteen (18).

Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.

Person: An individual, employer, employee, retail store manager or owner, the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

Self Service Display: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Tobacco Sales Certification Training: a certification training program which must be successfully completed by all tobacco sales clerks engaged in the sale or distribution of tobacco products directly to the consumer. For the purposes of this section, the content of any tobacco sales certification training program must be approved by the Board of Health. However, an equivalent training program approved by the State Department of Public Health will also meet the requirements of this provision. Certification shall expire three (3) years from the date of successfully completing said training at such time a re-certification training must be completed to maintain certification. The Board of Health shall establish a fee for the certification and re-certification training program.

Tobacco Sales Clerk: An individual, employer, employee, retail store manager, the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers who can produce documentation that he/she maintains a valid tobacco sales certification.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

Vending Machine: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

D. Tobacco Sales to Minors Prohibited:

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco products to a minor.
2. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Monterey Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
3. All retail sales of tobacco must be face-to-face between the seller and the buyer.

E. Identification: Identification: Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

F. Tobacco Sales Permit:

1. No person shall sell or otherwise distribute tobacco at retail within Monterey without first obtaining a tobacco sales permit issued annually by the Monterey Board of Health.
2. As part of the initial tobacco sales permit application process, the applicant will be provided with the Monterey Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all

employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.

3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.

4. The fee for a tobacco sales permit shall be determined by the Monterey Board of Health annually. All such permits shall be renewed annually by January 1st.

5. A separate permit is required for each retail establishment selling tobacco.

6. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.

7. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

8. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.

9. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. No person or entity selling tobacco products shall allow anyone under eighteen (18) years of age to sell cigarettes or other tobacco products.

G. Free Distribution:

No person shall distribute, or cause to be distributed, any free samples of tobacco products.

H. Out-of-Package Sales:

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

I. Self Service Displays:

All self service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

J. Tobacco Vending Machines:

All tobacco vending machines are prohibited.

K. Certification:

1. No person shall sell any tobacco product without first successfully completing an approved tobacco sales certification training and obtains confirmation of certification.

2. New employees have thirty (30) consecutive days to successfully complete an approved tobacco sales certification training. Employers must provide documentation confirming new hire if requested by Board of Health.

L. Violations pertaining to the Tobacco Sales Clerk:

1. It shall be the responsibility of the Tobacco Sales Clerk to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco. The violator shall receive:

a. In the case of a first violation:

Tobacco Sales Clerk, a fine of twenty-five dollars (\$25.00) and tobacco sales certification shall be suspended for seven (7) consecutive business days, must provide proof that he/she has signed up for the next available tobacco retailer training within seven (7) consecutive business days before selling tobacco products. Completion of training required within thirty (30) consecutive business days unless otherwise written consent from Monterey Board of Health to extend the time period.

b. In the case of a second violation within 24 months of the date of the current violation:

Tobacco Sales Clerk, a fine of fifty dollars (\$50.00) and tobacco sales certification shall be suspended for thirty (30) consecutive business days, must provide proof that he/she has signed up for the next available tobacco retailer training within thirty (30) consecutive business days before selling tobacco products. Completion of training required within thirty (30) consecutive business days unless otherwise written consent from Monterey Board of Health to extend the time period.

c. In the case of a third violation within a 24 month period:

Tobacco Sales Clerk, a fine of one hundred and fifty dollars (\$150.00) and tobacco sales certification shall be suspended for three hundred and sixty five (365) consecutive days.

2. Refusal to cooperate pursuant to this regulation shall result in the suspension of the tobacco sales certification and/or tobacco sales permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any Tobacco Sales Clerk who engages in the sale or distribution of tobacco products directly to a consumer while his or her certification is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

4. The Monterey Board of Health shall provide notice of the intent to suspend tobacco sales certification, which notice shall contain the reasons therefore. A hearing may be requested in writing within seven (7) days of receipt of letter. The Tobacco Sales Clerk or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. The Monterey Board of Health after a hearing, may suspend the tobacco sales certification.

5. Any Tobacco Sales Clerk who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

M. Violations pertaining to the permit holder and/or his or her business agent:

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco. The violator shall receive:

a. In the case of a first violation:

Permit holder and/or his or her business agent, a fine of one hundred dollars (\$100.00).

b. In the case of a second violation within 24 months of the date of the current violation:

Permit holder and/or his or her business agent, a fine of two hundred dollars (\$200.00) and the tobacco sales permit shall be suspended for seven (7) consecutive business days.

c. In the case of third violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of three hundred dollars (\$300.00) and the tobacco sales permit shall be suspended for fourteen (14) consecutive business days.

d. In the case of fourth violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of three hundred dollars (\$300.00) and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.

e. In the case of fifth violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of three hundred dollars (\$300.00) and the tobacco sales permit shall be suspended for three hundred and sixty five (365) consecutive business days.

2. Refusal to cooperate pursuant to this regulation shall result in the suspension of the tobacco sales certification and/or tobacco sales permit for thirty (30) consecutive business days.

3. Any permit holder who allows a sales clerk to sell or distribute tobacco products directly to a consumer without first obtaining a tobacco sales certification shall result in a fine of two hundred and fifty (\$250.00) dollars.

4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

5. The Monterey Board of Health shall provide notice of the intent to suspend a tobacco permit holder, which notice shall contain the reasons therefore. A hearing may be requested in writing within seven (7) days of receipt of letter. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. The Monterey Board of Health after a hearing, may suspend the tobacco sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

6. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

N. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue. Each day any violation exists shall be deemed to be a separate offense.

O. Enforcement:

Enforcement of this regulation shall be by the Monterey Board of Health or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of Monterey or its designated agent(s) and the Board shall investigate.

P. Severability:

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

Q. Effective Date:

This regulation shall take effect on January 14, 2008

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